

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

NASDAQ, INC.; NASDAQ ISE, LLC;  
AND FTEN, INC.,

Plaintiff,

v.

MIAMI INTERNATIONAL HOLDINGS,  
INC.; MIAMI INTERNATIONAL  
SECURITIES EXCHANGE, LLC; MIAX  
PEARL, LLC; AND MIAMI  
INTERNATIONAL TECHNOLOGIES,  
LLC,

Defendant.

No. 2:17-cv-06664-BRM-DEA

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Currently pending before the Court is Plaintiffs’ (“Nasdaq”) motion to amend. Dkt. 138. Defendants (“MIAX”) oppose that motion even though it merely seeks leave to drop all of the asserted patent claims from this case. *See* Dkt. 145 (Plaintiffs’ reply responding to Defendants’ arguments against granting leave to amend). Briefing on the motion closed on March 2, 2020. Plaintiffs file this notice to bring to the Court’s attention subsequent authority that is relevant to the motion to amend.

On May 1, 2020, the Patent and Trademark Appeal Board (“PTAB”) issued a General Order in Cases Involving Requests for Rehearing Under *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019) (the “General Order,” attached as Exhibit 1 hereto). Although the Federal Circuit in *Arthrex* and related decisions have specifically instructed the PTAB to “conduct further proceedings on remand before newly-designated Board panels,” the PTAB is refusing for now to do so. Ex. 1 at 1. The justification for the PTAB’s refusal to proceed as directed is that

“[s]everal parties in Board matters that have been subject to such Federal Circuit Orders have informed the Office that they intend to seek review of the pertinent Order by the Supreme Court of the United States.” *Id.* Based on this supposed justification, the PTAB claims to have discretion to stay every impacted matter (including PTAB matters between the parties to this case) “until the Supreme Court acts on a petition for certiorari or the time for filing such petitions expires.” *Id.* at 2.

The PTAB’s General Order is relevant here. Plaintiffs explained in their reply supporting the motion to amend that “[j]ustice requires allowing the amendment because there is still no end in sight to the procedural morass created by *Arthrex*.” Dkt. 145 at 1. The PTAB’s General Order confirms that this statement from Plaintiffs’ reply remains true—and that, if anything, the procedural confusion resulting from *Arthrex* has even worsened. Plaintiffs therefore should be permitted to amend, drop the patent claims from this district court case, and continue to pursue their trade secrets claims.

Dated: May 22, 2020

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served via ECF on all counsel of record on this 22nd day of May, 2020.

/s/ Amy Luria  
Amy Luria, Esq.